only to do sweaty work in distinguishing particular matched decisions but also to find underlying harmonies and discordances in general doctrine. The editors' basic approach calls for the use of many old cases; these are not inserted for their antiquarian interest, but serve rather to demonstrate that the rational study of doctrine often depends on the use of an historical method. I would have wanted the editors' questions to force the student more often to parse words in agreements and to advise definite steps in tangled fact situations that respect no boundaries, not even those set up in these chapters. But something, after all, must be left to the initiative and taste of the individual teacher.

Professors Kessler and Sharp have produced a first-rate book. Its flaws, as I see them, are minor and more than offset by its cogent pattern and its wealth of imaginative suggestion.

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LAW AND SOCIAL CHANGE IN THE U.S.S.R. By John N. Hazard. Toronto: The Carswell Company, 1953. Pp. x, 310. $4.50.

MANY people consider Soviet law a mere facade which scarcely conceals the operative realities of political dictatorship and terror. This view finds support in the writings of those scholars who have focused attention upon Communist Party control of legal doctrine, upon the lack of independence of the Soviet judiciary, upon the powers of the security police, upon the use of judicial trials for propaganda purposes, and so forth.

Professor Hazard's book—the fruit of his nearly two decades of experience with Soviet law—takes a quite different view. He treats Soviet law as an independent source of power for the Soviet leadership, an important technique of political and social engineering which is relatively isolated from other techniques such as police pressure and propaganda. He gives primary attention to property, contracts, criminal law, cooperatives (including collective farm law), labor law, patent and copyright law, social insurance, family law, and international law. Although he devotes a chapter to the one-party system and to the restrictions upon civil liberties, and a page or two to the Ministry of Internal Affairs, he presents these subjects as more or less peripheral. He does not discuss the removability of judges and their subjection to Party pressures; the famous "purge trials" of 1936 to 1938 are mentioned only once, in connection with the elimination of factions within the Communist Party.

These omissions are not due to any lack of awareness by the author of the importance of non-legal and illegal controls in Soviet society, but rather to his conviction that Soviet law has a reality of its own. This reality he demonstrates most effectively through the use of cases decided by the Soviet courts. The book is built almost entirely around such cases, of which there are over

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150 digested or referred to. It is, of course, impossible to tell from official Soviet case reports the extent to which disputes in the Soviet Union are resolved non-judicially by administrative, Party, or police decision. However, the reports do show that a very wide variety of problems come before the Soviet courts.

The author explains the judicial decisions, and the legislation which they interpret, as means whereby the Soviet leaders "have sought to solidify their power position and to lay the base for a new pattern of social organization."[1] The approach to Soviet law as an instrument of political and social control, and the implicit definition of Soviet law as the will of the leadership expressed in statutes and judicial decisions, will undoubtedly appeal to many readers. Even among those who would reject such a jurisprudence if applied to other countries, the opinion is widely shared that in the Soviet Union, certainly, to quote Lenin, "law is politics." In stressing power considerations, Professor Hazard has also brought the study of Soviet law into line with a current approach to Soviet institutions generally—though few who adopt this approach have attached as much importance to law in the Soviet "power process" as he does.

It is with some diffidence, therefore, and with the greatest respect for Professor Hazard's large storehouse of knowledge of Soviet legal materials, that this reviewer questions the validity of his basic analysis.

I

My first difficulty is with the ambiguities in the concept "power"; they limit severely its usefulness as a basis for analyzing a legal system. These ambiguities may be partially resolved, first, by keeping distinct various general categories of power, such as long-range and short-range power, real and formal power, economic and political power (though there remains the question of whether the word power has not shifted its meaning in the course of such analysis); and, second, by distinguishing, still further, various specific forms of power, such as the "power" to plan the production and distribution of goods, the power to get the plans executed, the power to suppress opposition, the power to prevent labor turnover, the power to promote efficiency in agriculture, the power to prevent theft and corruption, the power to promote initiative in science and technology—and a thousand other kinds of power which may all be added together to make up the general power concept.

When these distinctions are preserved, however, it becomes apparent that there is often an inherent conflict between different kinds of power. Thus the power position of the leadership is weakened by the industrial inefficiency which results from high labor turnover; its power position is also weakened by the industrial inefficiency which results from low worker morale caused by freezing workers to their jobs. Similarly, the leadership's power position

1. P. 3. *Cf.* pp. ix, 63, 276, and *passim*.

is weakened if industrial managers are permitted to upset plans by making their own decisions regarding production and distribution of goods; it is also weakened if the plans are frustrated because managers must wait for orders from Moscow before making any move. Again, the power of the leaders is weakened—or they think it is—if scientists are free to advance theories contrary to the Party line; but it is also weakened if central control of science inhibits creative and original discoveries and inventions. Faced with a multitude of such dilemmas, the Soviet leadership must continually sacrifice some kinds of power for the sake of other kinds of power; to say that the decisions it takes are means of enhancing its power does not explain those decisions.

Professor Hazard supplements a power analysis with an analysis in terms of molding a new society. He sometimes seems to identify the two analyses; in the first paragraph of his book, for example, he indicates his desire to present material "relating the Soviet system of law as an entirety to the power process, to the avowed aim of moulding a new society."[2] In other places he speaks of the two aspects—power and the remaking of society—as complementary rather than identical.[3] However, it would seem obvious that at many points there is a sharp conflict between these two goals of the Soviet leadership. This conflict is explicitly suggested at only one point in Professor Hazard's book, where he speaks of Soviet criminal law as "an instrument with which the leadership may deal with its enemies." "In a sense," he states, "it is no longer an element with which social change may be effected. It has become an element to hold behind the barriers those who would prevent the social change for which the foundations have been laid in property law and in social organization."[4] I doubt that this conflict in the functions of criminal law—repressing enemies versus effecting social change—has been so sharply resolved in favor of the former. Elsewhere in the volume Professor Hazard has shown the use of criminal law to effect social change: to make officials behave rationally, to make workers serve the factory rather than their own interests, and so forth. In any case, other branches of Soviet law offer ample evidence of the conflict between the leadership's desire to maintain its power and its desire to remake society. The relative independence of the peasant household on the collective farm[5] is a good example of compromise between these two conflicting goals. Professor Hazard's belief that the cooperative form is eventually doomed to be swallowed up by state centralization[6]—as Soviet doctrine itself proclaims—assumes a docile peasantry which will work faithfully without the incentives of the traditional household economy.

2. P. ix.

3. *E.g.*: "It is in this area [property law] that the Soviet leaders have sought to solidify their power position and to lay the base for a new pattern of social organization." P. 3.

4. P. 109.

5. Pp. 147-50.

6. Pp. 156-7.

II

Apart from the ambiguities inherent in the concept of power, the approach to Soviet law as a means of maintaining political and social control by the leadership seems to lead to a serious oversimplification of the legal problems which confront the Soviet leadership. One of Professor Hazard's interesting cases will illustrate my point. An excavating corporation had contracted with a building corporation to excavate 16,000 cubic meters of earth at a certain price per cubic meter; after two months of work, without notifying the builder, "in the dead of night the excavating corporation moved its excavators from the spot and stopped work."[7] The builder thereafter, without notifying the excavator, hired manual labor to complete the excavation, and subsequently sued for the difference between the cost of the manual labor and the contract price. At trial before the Moscow State Arbitration Tribunal, evidence was presented by both sides relating to the condition of the soil which might justify the defendant, on the one hand, in stopping work, and the plaintiff, on the other hand, in hiring manual labor to complete the work. Professor Hazard reports the decision as follows:

> "The tribunal's decision must have been a surprise to both parties. The arbitrator declared that the excavating corporation and the building corporation had both been at fault, and so seriously at fault that their action was criminal. The prosecutor was informed of the facts to determine whether prosecution should follow. The arbitrator was incensed that the excavating corporation had stopped work without notice to the other party, and that the building corporation had remained passive and spent 83,000 roubles of State funds on costly manual labour without trying to make the excavating corporation return to the job. No damages were awarded because the decision to employ manual labour had been taken by the building corporation on its own initiative and without trying to have the work completed by the other party."[8]

"The facts suggest," Professor Hazard concludes, "that the managers of the two corporations felt remarkably free to make their own decisions in matters of great concern involving thousands of roubles of expense. While they were disciplined for their actions it may be presumed that they acted as they did because the general temper of the community at the time permitted such action."[9]

This interpretation (and similar interpretations of other cases) may make sense in the context in which the author places it—the utilization of law to maintain centralized control over the managers. But is that the context in which the tribunal (and the Soviet leadership, if you will) made its decision? The problem reflected in this case, as in many others presented in the book,

7. P. 58.
8. Pp. 58-9.
9. P. 59.

was not how to subject people to the control of the leadership, but rather how to subject them to the control of each other. Two managers in a contract relationship reacted in a primitive manner when their expectations were not fulfilled. Their conduct reflects an irresponsible and perhaps irrational attitude not toward the regime but toward each other, and, more specifically, toward their legal relationship. This is a lack of legal sophistication which is chacteristically Russian. Managers must be taught to keep their contracts, and to seek amendment of contracts when circumstances so require; in any case, they must not withdraw their equipment "in the dead of night" and incur expenses chargeable to the other party without notice to him. (The denial of a contract remedy is not the surprising element in the case, and might well be what an American court would decide in similar circumstances; the suggestion that there should be criminal prosecution of both parties is what makes the case interesting.) For the Soviet leadership this is not a problem of "power" ("repression of enemies") or of "social change" except in the most general sense (as one might say it is a problem of "life"); it is primarily a problem of instilling in managers a sense of legal reciprocity, of mutuality of rights and duties, of enforcing, in the Soviet phrase, "contract discipline." Behind this problem there lie the crucial difficulties of maintaining a rational system of distribution of goods and services in a planned economy.

There can be no quarrel with the proposition that in a general sense to the Soviet leaders "law is politics," and that they use law to influence Soviet citizens to behave in a manner beneficial to the regime. But, to paraphrase Clausewitz' famous maxim about war, law is politics carried on by other means. It is the means, and especially the procedures, which distinguish law from other political activity, just as they distinguish the politics of peace from the politics of war. The means chosen severely limit the range of available alternatives. Thus even where the Soviet regime has utilized law most ruthlessly for enhancing its power, it has encountered problems arising from the nature of law itself. For example, by a 1940 statute, criminal sanctions were imposed upon workers for lateness or absence without adequate reason and for quitting their jobs without managerial permission. Professor Hazard reveals for the first time significant evidence that since 1952, at least, this legislation has not been enforced, though there has been no publication of its repeal.[10] Although one can only speculate on the reasons for this development, it seems clear that the 1940 law, in relying so heavily upon judicial control of labor discipline, exceeded the limits of effective legal action. Labor turnover continued despite the criminal sanctions, which were avoided or evaded by one means or another. The problem goes beyond the question of the Soviet leadership's severity or lack of severity in "moulding the disciplined and devoted Soviet workman needed to accomplish its purposes."[11] The more fundamental problem concerns the limitations which law itself imposes upon rulers who seek to use it.

10. P. 186.
11. *Ibid.*

III

Apart from defects of ambiguity and oversimplification, the study of Soviet law as an instrument for maintaining the power of the leaders and accomplishing their social and economic objectives seems to suffer from a third defect. By treating Soviet law always as a means to other ends, it ignores the specific legal ends of Soviet law. The terms justice and injustice are conspicuous by their absence from Professor Hazard's index and I believe from the pages of the text as well. The Soviet literature does not hesitate to claim that Soviet law is characterized by procedural fairness, equality before the law, objectivity of decisions, stability of law, and other characteristics of justice. Indeed Vyshinsky would qualify Professor Hazard's statement that to the Marxist law is politics: he has said that Soviet law is more than politics, and has condemned those Marxists who have attempted to reduce it to politics. It seems to me that Professor Hazard could have done a great service by evaluating these Soviet claims and by testing them against Soviet legal realities.

It may be permissible to write a book on Soviet law which treats law as an independent alternative to force in the Soviet system and which, except for one brief reference,[12] does not seek to show relationships between the two. It seems to me a questionable undertaking, however, to write a book about Soviet law which does not treat explicitly the injustices in Soviet law itself —*e.g.*, the trial of certain crimes in the absence of the accused and without right of counsel or right of appeal—and the extent to which these exceptional provisions influence the whole system. Professor Hazard's neglect to discuss the Soviet judicial system, the legal profession, and civil and criminal procedure, which incidentally makes it difficult for the reader fully to understand the cases which he presents, is, I think, due to his acceptance of a framework of analysis which places law entirely in the service of non-legal ends. These ommissions may not seem important to the social scientist. However, the lawyer's main contribution to social science must consist in the demonstration not merely that law is an important technique for achieving political, economic or social results, but also that it is an independent source of strength or weakness in society, and that "due process of law" is more than a means to other ends—it is an end in itself.

It would be unfair to charge Professor Hazard with all the implications of a legal philosophy which he has not explicitly adopted but has merely used as a basis of analysis. Your reviewer trusts in any event that his criticism has indicated that this is a challenging book containing much that is of interest and of value.

HAROLD J. BERMAN†

12. Professor Hazard states that the Ministry of Internal Affairs "is designed to cope primarily, but not entirely, with mass dissension and unrest exceeding the capabilities of the criminal courts, which are necessarily limited in effectiveness in time of crisis because of their individualised approach and their relatively slow proceedings." P. 89.

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